BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185

To: The Commission

PETITION FOR RECONSIDERATION AND CLARIFICATION OF COX COMMUNICATIONS, INC.

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SUMMARY

The *First Report and Order* was remarkably successful in crafting rules that will bring the benefits of fair competition to consumers across the country. It was particularly important that the Commission adopted a national framework to govern the results of arbitrations under Section 252. Nevertheless, there are areas in which the Commission should clarify its rules to further strengthen the pro-competitive framework adopted in the *First Report and Order*. The Commission should adopt changes that strengthen that framework, but should resist efforts to weaken the rules implementing the 1996 Act.

First, the Commission should clarify that symmetrical compensation for transport and termination is necessary whenever switches perform comparable functions. Otherwise, incumbent LECs may attempt to avoid this requirement when competitors use architectures that differ from those traditionally deployed in the telephone network.

Second, the Commission should clarify that, for rating purposes, carriers may associate NXX codes with rating points other than switch locations or points of interconnection. This clarification will prevent toll charges on calls that are, in fact, local.

Third, the Commission should require incumbent LECs to file their existing interconnection agreements on a more abbreviated schedule. Existing agreements include information that is important in the Section 252 process, and the current requirement will not make that information available until after the first round of arbitrations is completed.

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Cox Communications, Inc. ("Cox"), by its attorneys, hereby submits this petition for reconsideration and clarification of the Commission's *First Report and Order* in the above-reference proceeding.[1/]

I. Introduction

Cox's initial comments in this proceeding heralded it as "the most important proceeding the Commission will undertake as it implements the Telecommunications Act of 1996."[2/] It also was one of the most difficult: Adopting rules that open up the local

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1/ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order,* CC Docket No. 96-86, CC Docket No. 95-185, FCC 96-325, rel. Aug. 8, 1996 (the "*First Report and Order*"). *Federal Register* notice of the *First Report and Order* appeared on August 29, 1996. This petition is filed on the first business day following the thirtieth day after publication. Thus, it is timely filed.

2/ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (the "1996 Act").

telecommunications marketplace to true, effective competition would be a formidable task under any circumstances. Given the difficulty of the task, and the strict time limits mandated by the 1996 Act, the Commission's success in crafting rules that will bring the benefits of fair competition to consumers across the country was remarkable. In broad outline, and in the vast majority of the critical details, the *First Report and Order* sets the stage for competitors such as Cox to enter the local telephone market on even terms. Indeed, the Commission's success was acknowledged recently by the Chairman of the House Commerce Committee, Thomas Bliley, who stated that the Commission "delivered in full" when it adopted the *First Report and Order*.[3/]

It is particularly significant that the Commission recognized, as Cox urged, that a national framework with defaults, when necessary, to govern arbitrations was critical to limit the excessive bargaining power of incumbent LECs in interconnection negotiations.[4/] The Commission's determination that national rules should be adopted to govern how States will arbitrate disputes between incumbent LECs and requesting carriers is essential to the prompt development of competition in the local telephone marketplace.

There are, however, certain areas in which the Commission should clarify the *First Report and Order* to assure that the full benefits of the 1996 Act will be realized. First, the Commission should clarify that compensation for transport and termination of local traffic must be symmetrical between switches that perform equivalent functions. This will prevent

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3/ *Telecom Subcommittee Adds Hot Issues to FCC Streamlining Bill,* COMM. DAILY, Sep. 13, 1996, at 1.

4/ *See First Report and Order* at ¶ 55; Comments of Cox, filed May 16, 1996, at 45-6 and Exhibit 3 (Declaration of Dr. Gerald Brock).

incumbent LECs from arguing that they are entitled to more compensation for the mutual exchange of traffics than competitive LECs should receive because of the inefficient designs of ILEC networks.

Second, the Commission should clarify that NXX codes may be associated with locations other than the point of interconnection or a switch location for rating purposes. This clarification is necessary to prevent the imposition of toll charges on calls that are, in fact, local.

Third, the Commission should modify its rules governing incumbent LEC interconnection agreements to require that agreements be filed with the relevant state commissions more promptly. Without such a modification, incumbent LECs will be able to avoid their obligation to make those existing agreements available to competing carriers, as required by the 1996 Act.

These clarifications of and modifications to the Commission's rules are not intended to alter significantly the pro-competitive framework the Commission has erected in the *First Report and Order*. Rather, they are intended to strengthen that framework and assure that the intent of Congress in adopting the 1996 Act is carried forward. The Commission should evaluate all requests for reconsideration in this proceeding according to whether they meet that test.

II. The Commission Should Clarify that Symmetrical Compensation Is Required for All Exchanges of Traffic Between Switches Performing Similar Functions.

The rules adopted in the *First Report and Order* generally require symmetry in the compensation between carriers for reciprocal transport and termination. *First Report and*

Order at ¶ 1089. There are, however, differences in network architecture between incumbent LECs and their competitors. Competitive networks tend to be more efficient, but incumbent LECs are using those differences to attempt to avoid symmetrical compensation. Thus, the Commission should clarify that symmetrical compensation is required whenever switches providing comparable functions are interconnected.

First, it is critical to recognize that the architectures of incumbent LEC networks and the networks of new entrants often differ significantly. New entrants, including CMRS providers, design their networks based on current technology. Incumbent LEC network architectures often reflect accommodations to technology in use thirty to fifty years ago. Consequently, incumbent LEC switches generally cover smaller areas than new entrant switches and often are more specialized in the functions they provide. For these reasons, incumbent LEC architectures generally are less efficient than those deployed by CMRS providers and CLECs.[5/]

It is often the case that incumbent LEC switches perform tandem or end office functions, but not both. Tandems route calls between switches and end offices route calls to or from end users.[6/] Tandems also connect the local network to the interexchange networks.

5/ As the Commission has recognized, rate regulation also has given incumbent LECs the incentive to overbuild and "gold plate" their networks to maintain profits under rate of return regimes. *See generally Policy and Rules Concerning Rates for Dominant Carriers,* Report and Order and Second Further Notice of Proposed Rulemaking, 4 FCC Rcd 2873, 2790 (rate of return regulation "creates a powerful incentive for carriers to 'pad' their costs, regardless of whether additional investment is necessary or efficient.")

6/ Even when an end office performs the tandem-like function of routing a call to another end office, the routing is from an end user to a switch, not from a switch to a switch.

CLEC and CMRS switches, however, combine these functions. They route calls to and from end users, to other switches and to and from interexchange networks. They perform all of these functions because significant advances in technology since the beginning of the traditional public switched telephone network have greatly increased the capacities and capabilities of switches. Some of these advances occasionally have been incorporated into incumbent LEC networks and, for instance, permit some incumbent LEC switches to be partitioned into "tandem" and "end office" elements.

Consumers are likely to benefit from advances in switch technology because spreading the cost of a switch over a wider customer base reduces per-customer costs and because, as the introduction of CLASS services demonstrates, advanced switches support a wider range of services than older switches. Cox's experience in interconnection negotiations is that incumbents seek to exploit these differences in network architecture and switch functions to avoid paying symmetrical compensation for transport and termination.

Incumbent LECs might avoid truly symmetrical compensation by convincing arbitrators that new entrant and CMRS switches must be treated as end offices for the purpose of determining compensation for transport and termination of traffic. If they succeeded in doing so, entities interconnecting with incumbent LECs would be faced with three unappealing choices: (1) exchanging traffic at the incumbent LEC tandem while accepting asymmetrical compensation; (2) exchanging traffic at each incumbent LEC end office, obtaining symmetrical compensation but greatly increasing their costs of bringing the traffic to the point of exchange; or (3) obtaining unnecessary "tandem" facilities in addition

to the facilities they need. None of these choices is economically efficient or desirable as a matter of policy.

This is not an isolated problem. Incumbent LECs no doubt are attempting to negotiate asymmetrical interconnection compensation arrangements with parties other than Cox as well. As the Commission recognized in the *First Report and Order,* there is a long history of successful LEC attempts to maintain asymmetrical compensation for cellular interconnection, even after the Commission ordered symmetry in the 1980s. *First Report and Order* at ¶ 1087. Equally important, history also shows that incumbent LECs rarely have recognized CMRS carriers' switches as co-equal with their own. At best, cellular MTSOs have been treated as end offices; sometimes they have been treated as if they were PBXs for the purposes of interconnection. There is no reason to believe that incumbent LECs — or arbitrators — will treat competitive interconnectors fairly without specific Commission direction on this issue.

The Commission addressed this issue in part in the *First Report and Order,* but further clarification is necessary. The *First Report and Order* states that an interconnecting carrier's switch will be treated as if it is a tandem if it "serves a geographic area comparable to that served by the incumbent LEC's tandem switch" for purposes of determining the appropriate interim proxy rate, but does not specify how interconnecting carriers' switches will be treated when final rates are determined. It also does not specify how interconnecting carriers' switches will be treated if they cover areas smaller than those covered by a LEC's tandem switch, as will be likely in suburban and rural areas. Consequently, there is still a

significant risk that incumbent LECs will succeed in obtaining asymmetrical transport and termination rates.

The Commission can prevent this problem by requiring compensation for transport and termination to be symmetrical whenever interconnecting switches perform comparable functions. Thus, if a switch provides both end office and tandem functionality, it should be treated as a tandem when connecting with a tandem and as an end office when connecting with an end office. The symmetry requirement also should apply when two switches with mixed functionality exchange local traffic.

Requiring symmetry will eliminate inevitably contentious disputes about whether a switch is equivalent to an end office or a tandem and will eliminate the ambiguity in the Commission's current rules. At the same time, requiring symmetrical compensation will ensure that the Commission's interconnection rules are neutral as to technology, create no efficiency disincentives and minimize network costs. If the Commission does not require symmetry when networks with different architectures are interconnected, a regulatory bias in favor of incumbent LEC architectures and technologies and against the technologies and architectures deployed by CMRS providers and CLECs may well emerge. Such a bias would be economically inefficient and, over time, would limit the benefits of competition to

consumers.[7/] Consequently, the Commission should clarify its current requirement to require symmetry whenever interconnecting switches perform any comparable functions.

III. The Commission Should Clarify that Carriers May Associate NXX Codes with Locations Other Than a Point of Interconnection or a Switch Location for Rating Purposes.

The *First Report and Order* establishes the scope of local calling areas for purposes of determining whether specific traffic is subject to the rules governing exchange of traffic for transport and termination. The Commission's Rules require landline carriers to exchange traffic on this basis when calls are within state-defined local calling areas, while CMRS calls are considered local if they are within the boundaries of an MTA. *First Report and Order* at ¶¶ 1035-6. While these rules address the issue of the cost of transport and termination to carriers, they do not address certain interconnection anomalies that could result in excessive charges to end users who call customers of CLECs or CMRS providers. Thus, the Commission should clarify its rules to establish that CLECs and CMRS providers may establish rating points that differ from their points of interconnection or switch locations for the purpose of rating calls to their customers from customers of the incumbent LEC.

As with several other issues the Commission has faced in this proceeding, the issue of rating traffic to CLECs and CMRS providers arises because of differences in network architecture. Incumbent LEC networks, which depend on multiple end offices to serve a

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7/ In an efficient, competitive market, the charges for transport and termination always would by symmetrical because there would be only one market-clearing price for that function. Asymmetry is possible only because the only way to reach another carrier's customer is through that carrier's network and because incumbent LECs have an historic monopoly that allows them to control the connections to almost every customer. Thus, a symmetry requirement is necessary to mimic the results of a competitive market.

given geographic area, associate NXX codes with each of those offices and, as a result, have multiple rating points over their service territories. CLECs and CMRS providers, on the other hand, typically cover large areas with a single switch and, traditionally, would have a single rating point, located at that switch, that would be used for all of their customers.

In an area the size of a cellular MSA (which is similar to the areas covered by many CLEC switches), an incumbent LEC will have many local calling areas, and the location of a CMRS provider's or CLEC's switch may be treated as local only to a small minority of the incumbent LEC's customers. This has two consequences. First, if the state regulator requires the use of local calling areas smaller than the entire coverage area of a CLEC switch, locating the rating point at the CLEC switch will turn many CLEC-to-ILEC calls into toll calls, regardless of the physical locations of the calling and called parties.[8/] Second, calls by incumbent LEC customers from outside the local calling area where the CLEC or CMRS switch is located will be treated as toll calls, again regardless of the physical locations of the parties to the call.[9/] In the first case, CLECs and CMRS providers would be unable to provide services comparable to those offered by incumbent LECs, solely because they use more advanced and efficient network architectures. In the second case, CMRS providers and CLECs would be disadvantaged because, on average, it would cost more to call their

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8/ This will not occur for CMRS providers because the Commission has defined the CMRS local calling area.

9/ This concern is not affected by the Commission's decision to permit CMRS providers to use either the point of interconnection or the location of the cell where a call originates in determining whether a call is "local" for purposes of determining whether transport and termination applies. *First Report and Order* at ¶ 1044. The determination of whether transport and termination compensation applies affects only the relationship of the two carriers. It does not affect the amounts that a carrier charges its customers.

customers than to call the customers of the incumbent LEC.[10/] While there may be circumstances in which a CLEC or CMRS provider is willing to bear this disadvantage, the Commission should adopt explicit policies that prevent it from being imposed on new entrants by state or incumbent LEC fiat.

The Commission can address this problem by clarifying its rules to permit carriers to associate NXX codes with rating points other than the physical locations of their switches or the point of interconnection.[11/] This approach will permit CLECs and CMRS providers to ensure that calls to and from their customers are not accidentally subjected to toll charges by virtue of switch locations. Moreover, it will reduce customer confusion that could result from unexpected toll charges on, for instance, calls between next door neighbors. Indeed, for these and similar reasons, some states have considered and, at least in one case, adopted requirements that CLECs obtain sufficient NXX codes to match incumbent LEC rate

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10/ For instance, in a region with two local calling areas where 80 percent of all calls are within the local calling area, restricting a CLEC to a single rating point at its switch location would result, on average, in 50 percent of the calls from incumbent LEC customers to CLEC customers being rated as toll calls, even though only 20 percent of those calls would be between locations in different local calling areas. (This percentage is calculated as follows: 0 percent of the calls from the local calling area where the CLEC switch was located and 100 percent of the calls from the local calling area where the CLEC switch was not located would be rated as toll calls. Assuming that each local calling area generates the same number of calls, a total of 50 percent of all calls to the CLEC would be rated as toll calls.)

11/ The Commission also should clarify that, for purposes of LEC-CMRS interconnection, the CMRS provider will choose whether the point of interconnection or the initial cell site is used in determining whether calls are eligible for reciprocal compensation. The *First Report and Order* does not specify that it is the CMRS provider's choice, but only the CMRS provider is in a position to determine whether, among other things, it is feasible to record and tabulate initial cell site information.

centers.[12/] Finally, a Commission determination that both CLECs and CMRS providers are entitled to use multiple rating points, regardless of the number or location of their switches, is well within the Commission's jurisdiction, both under Section 251(b) and under Section 251(e), which grants the Commission authority over all numbering matters. Therefore, the Commission should adopt such a clarification of the rules adopted in the *First Report and Order*.

IV. The FCC Should Adopt More Stringent Filing Requirements for ILEC Interconnection Agreements.

Cox supports the Commission's determination that existing incumbent LEC interconnection agreements fall within the framework of Sections 251 and 252 and therefore are subject to the state commission submission and approval process contained in the 1996 Act. While neighboring incumbent LECs have longstanding arrangements in place for the exchange of traffic, the scope of these arrangements and the levels of reciprocal compensation paid by one LEC to another have, by and large, been heavily shielded from public disclosure.

The Commission correctly recognized that it would be entirely contrary to the letter and spirit of the 1996 Act to exempt pre-existing interconnection arrangements from the state commission process. The FCC reasoned that state commissions must have the opportunity to determine whether these pre-existing arrangements include provisions that violate the 1996 Act or are contrary to the new competitive public interest test the states are to apply. In

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12/ *See* Teleport Communications Group, Inc. Petition for Declaratory Ruling to Impose Competitively Neutral Guidelines For Numbering Plan Administration, filed Jul. 12, 1996, at Attachment A.

addition to properly interpreting its legal authority to impose a filing requirement, the FCC identified several significant policy reasons why mandatory filing of interconnection contracts was required. Public filing permits review of the rates, terms and conditions that are being made available to others. Disclosure of agreements allows assessment of what ILECs view as technically feasible and assists in policing against potential discrimination. In contrast, the FCC recognized that failure to disclose interconnection arrangements could prevent competition, as ILECs might otherwise maintain non-compete clauses or other provisions that act as disincentives to compete and create price barriers to new entrants.[13/]

The *First Report and Order* properly deals with the claimed ILEC concern that disclosure of contracts may obligate them to extend non-economic arrangements to new entrants. Under the FCC's framework, state commissions are free to reject any aspect of current interconnection arrangements that either discriminate against a non-party or are contrary to the public interest. A state is therefore able to account for changed circumstances and necessary changes to economic and other existing arrangements if the state commission determines that they cannot be sustained in the new competitive environment. Conversely, if a state commission approves an agreement, it becomes available to any interested telecommunications carrier under the provisions of Section 252(i).

The Commission's pro-competitive determination to require the filing of existing contracts, however, is in danger of being undermined by a timetable that delays the required

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13/ The *First Report and Order* posited the situation where a new entrant would be unable to compete on price if it was unable to obtain the same economic arrangements as neighboring ILECs provide to one another, effectively insulating ILECs from competition. *First Report and Order* at ¶ 168.

filings until after the initial rounds of arbitrations and negotiations have concluded.[14/] For all the reasons the *First Report and Order* articulates, it is essential to the expeditious establishment of competition that existing agreements be available during the state arbitration process, as well as for state proceedings on universal service and intrastate access charge reform.

The FCC should accelerate the timetable it established to require all Class A carriers to file all their agreements with other ILECs before the end of the year, while permitting states to review those agreements on any reasonable schedule. Acceleration does not impose an undue burden on Class A ILECs, who merely would be called on to file contracts that already exist. It would not impose any additional burden on state commissions because the mere act of filing does not require immediate action by the state commission and will provide these commissions with potentially valuable information for state universal service and access charge proceedings.[15/] The information contained in existing agreements is highly relevant to those carriers seeking interconnection through the negotiation and arbitration process and the minimal additional burden its filing might place on ILECs or state commissions is far outweighed by the benefits to competition from their timely disclosure.

14/ With little discussion, the FCC set June 30, 1997, as the date by which Class A ILECs must file their existing arrangements with state commissions. *First Report and Order* at ¶ 171.

15/ Because these agreements would not be filed as part of the negotiation process under Section 252, they would not be subject to the time limits for newly-negotiated agreements.

V. Conclusion.

For all of these reasons, Cox respectfully requests that the Commission modify the rules adopted in the *First Report and Order* in accordance with this petition.

Respectfully submitted,

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September 30, 1996

CERTIFICATE OF SERVICE

I, Tammi A. Foxwell, a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 30th day of September, 1996, I caused copies of the foregoing "Petition for Reconsideration and Clarification of Cox Communications, Inc." to be served via hand delivery upon the following persons:

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